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*Attorneys for Plaintiff  
Deckers Outdoor Corporation*

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

DECKERS OUTDOOR CORPORATION, ) CASE NO.  
a Delaware Corporation, )

Plaintiff,

v.

JJ SHOES, an unknown business entity;  
JACK ZHANG, an individual and DOES  
1-10, inclusive,

Defendants.

**PLAINTIFF'S COMPLAINT FOR  
DAMAGES AND EQUITABLE  
RELIEF:**

- 1. TRADE DRESS  
INFRINGEMENT;**
- 2. FALSE DESIGNATIONS OF  
ORIGIN AND FALSE  
DESCRIPTIONS;**
- 3. FEDERAL UNFAIR  
COMPETITION;**
- 4. PATENT INFRINGEMENT;**
- 5. UNFAIR COMPETITION UNDER  
CALIFORNIA COMMON LAW**

**JURY TRIAL DEMANDED**

**Plaintiff Deckers Outdoor Corporation** for its claims against **Defendants JJ Shoes and Jack Zhang** (collectively "Defendants") respectfully alleges as follows:

**JURISDICTION AND VENUE**

1. Plaintiff files this action against Defendants for trade dress infringement and unfair competition under the Lanham Trademark Act of 1946, 15 U.S.C. §1051 et seq. (the "Lanham Act"), patent infringement arising under the patent laws of the

1 United States, and for related claims of unfair competition under the statutory and  
2 common law of the state of California. This Court has subject matter jurisdiction over  
3 the claims alleged in this action pursuant to 28 U.S.C. §§ 1331, 1338.

4 2. This Court has personal jurisdiction over Defendants because Defendants  
5 are incorporated, domiciled, and/or do business within this judicial district.

6 3. This action arises out of wrongful acts by Defendants within this judicial  
7 district and Plaintiff is located and has been injured in this judicial district by  
8 Defendants' alleged wrongful acts. Venue is proper in this district pursuant to 28  
9 U.S.C. § 1391 because the claims asserted arise in this district.

### 10 **THE PARTIES**

11 4. Plaintiff Deckers Outdoor Corporation ("Deckers") is a corporation  
12 organized and existing under the laws of the state of Delaware with an office and  
13 principal place of business in Goleta, California. Deckers designs and markets  
14 footwear identified by its famous UGG® trademark and other famous trademarks.

15 5. Upon information and belief, Defendant JJ Shoes is an unknown business  
16 entity with an office and principal place of business at 10138 E. Rush Street, South El  
17 Monte, California 91733.

18 6. Upon information and belief, Defendant Jack Zhang is an individual  
19 domiciled in this judicial district and is a member, officer, director, and/or managing  
20 agent of Defendant JJ Shoes.

21 7. Plaintiff is unaware of the names and true capacities of Defendants,  
22 whether individual, corporate and/or partnership entities named herein as DOES 1  
23 through 10, inclusive, and therefore sues them by their fictitious names. Plaintiff will  
24 seek leave to amend this complaint when their true names and capacities are  
25 ascertained. Plaintiff is informed and believes and based thereon alleges that said  
26 Defendants and DOES 1 through 10, inclusive, are in some manner responsible for the  
27 wrongs alleged herein, and that at all times referenced each was the agent and servant  
28

1 of the other Defendants and was acting within the course and scope of said agency and  
2 employment.

3 8. Plaintiff is informed and believes, and based thereon alleges, that at all  
4 relevant times herein, Defendants and DOES 1 through 10, inclusive, knew or  
5 reasonably should have known of the acts and behavior alleged herein and the damages  
6 caused thereby, and by their inaction ratified and encouraged such acts and behavior.  
7 Plaintiff further alleges that Defendants and DOES 1 through 10, inclusive, have a  
8 non-delegable duty to prevent or not further such acts and the behavior described  
9 herein, which duty Defendants and DOES 1 through 10, inclusive, failed and/or refused  
10 to perform.

### 11 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

#### 12 **A. Deckers' UGG® Brand, Bailey Button Boot Trade Dress and Bailey** 13 **Button Design Patents**

14 9. Deckers has become well known throughout the United States and  
15 elsewhere as a source of high quality footwear products identified at least by its  
16 UGG® brand of premium footwear.

17 10. Deckers' UGG® products are distributed and sold to consumers through  
18 retailers throughout the United States at point of sale and on the Internet, including  
19 through its website [www.uggaustralia.com](http://www.uggaustralia.com).

20 11. Some of the more widely recognized styles within the UGG® family of  
21 sheepskin boots are the "Bailey Button" styles. The Bailey Button styles (examples of  
22 which are shown below) are characterized, *inter alia*, by

- 23 • Classic suede boot styling made famous by the UGG brand;
- 24 • Overlapping of front and rear panels on the lateral side of the boot shaft;
- 25 • Curved top edges on the overlapping panels;
- 26 • Exposed fleece-type lining edging the overlapping panels and top of the
- 27 boot shaft; and
- 28

• One or more buttons (depending on the height of the boot) prominently featured on the lateral side of the boot shaft adjacent the overlapping panels (hereinafter “Bailey Button Boot Trade Dress”).



12. The Bailey Button Boot Trade Dress was an original design by Deckers and the key elements thereof are non-functional and serve primarily to identify Deckers and its UGG® brand as its source.

13. Since 1978, when the UGG® Brand was founded, the popularity of UGG® boots has steadily grown across the nation and even the globe. The UGG® Brand has always been and remains highly coveted by consumers. This commitment to quality has helped to propel the UGG® Brand to its current, overwhelming level of popularity and cemented its status as a luxury brand.

14. It has now been thirteen years since UGG® boots were first featured on Oprah’s Favorite Things® in the year 2000, and Oprah emphatically declared on national television how much she “LOOOOOVES her UGG boots.” The popularity of UGG® Brand footwear has grown exponentially since then with celebrities including Kate Hudson and Sarah Jessica Parker among myriad others regularly donning them. UGG® sheepskin boots have become a high fashion luxury item and can be found on fashion runways around the world.

15. Introduced in 2009, the Bailey Button Boot Trade Dress has continuously appeared on UGG® boots, which have been featured on Deckers’ advertising and promotional materials as well as in the trade publications set forth above. Deckers has

1 extensively used and promoted the Bailey Button Boot Trade Dress such that it is  
2 closely identified with the UGG® brand and has gained widespread public recognition.

3 16. Deckers has spent substantial time, effort, and money in designing,  
4 developing, advertising, promoting, and marketing its line of footwear embodying the  
5 Bailey Button Boot Trade Dress. Deckers' efforts have been successful and Deckers  
6 has sold a substantial amount of UGG® boots bearing the Bailey Button Boot Trade  
7 Dress.

8 17. Due to its long use, extensive sales, and significant advertising and  
9 promotional activities, Deckers' Bailey Button Boot Trade Dress has achieved  
10 widespread acceptance and recognition among the consuming public and trade  
11 throughout the United States.

12 18. Many of Deckers' UGG® footwear designs, including those with the  
13 Bailey Button Boot Trade Dress, are also protected by design patents issued by the  
14 United States Patent and Trademark Office. Design Patents for UGG® Bailey Button  
15 Boot styles include, but are not limited to, U.S. Patent Nos. D599,999 for the "Bailey  
16 Button Single" boot (registered on September 15, 2009) and D616,189 for the "Bailey  
17 Button Triplet" boot (registered on May 25, 2010) (hereinafter "Bailey Button Design  
18 Patents"). Attached hereto and incorporated herein as Exhibit 1 are true and correct  
19 copies of the Bailey Button Design Patents.

20 19. Deckers is the lawful assignee of all right, title, and interest in and to the  
21 Bailey Button Design Patents.

22 **B. Defendants' Infringement of the Bailey Button Boot Trade Dress and**  
23 **Bailey Button Design Patents**

24 20. Upon information and belief, Plaintiff hereon avers that Defendants have  
25 manufactured, designed, advertised, marketed, distributed, offered for sale, and/or sold  
26 footwear that infringe upon Plaintiff's Bailey Button Boot Trade Dress and Bailey  
27 Button Design Patents ("Infringing Products").  
28



1           21. Upon information and belief, Plaintiff hereon avers that Defendant JJ  
2 Shoes advertises, offers for sale, and sells footwear, including the Infringing Products,  
3 at its store, located at 10138 E. Rush Street, South El Monte, California 91733.

4           22. Upon information and belief, Defendant JJ Shoes has offered for sale  
5 and/or sold the Infringing Products to other resellers and/or retailers within this judicial  
6 district.

7           23. Upon information and belief, Defendant Jack Zhang is an owner, officer,  
8 member, director, and/or managing agent of Defendant JJ Shoes, and is the active,  
9 moving, conscious forces behind the infringing activities alleged herein.

10          24. Deckers has not granted a license or any other form of permission to  
11 Defendants with respect to the Bailey Button Boot Trade Dress and/or the Bailey  
12 Button Design Patents.

13          25. Given the widespread popularity and recognition of Deckers' Bailey  
14 Button styles, Plaintiff avers and hereon alleges that Defendants had knowledge of  
15 Deckers' rights to the Bailey Button Boot Trade Dress and its Bailey Button Design  
16 Patents thereto and has intentionally utilized said Bailey Button styles on their own  
17 brand of products in an effort to pass them off as if they originated, are associated  
18 with, are affiliated with, are sponsored by, are authorized by, and/or are approved by  
19 Deckers.

20          26. Deckers is informed and believes and hereon alleges that Defendants are  
21 competitors and have copied Deckers' Bailey Button Boot Trade Dress and/or Bailey  
22 Button Design Patents in an effort to exploit Deckers' reputation in the market.

23          27. Deckers is informed and believes and hereon alleges that Defendants have  
24 acted in bad faith and that Defendants' deceptive acts have misled and confused and  
25 were intended to cause confusion, or to cause mistake, or to deceive as to the  
26 affiliation, connection, or association of Defendants' Infringing Products with Deckers,  
27 or as to the origin, sponsorship, or approval of Defendants' Infringing Products by  
28 Deckers.

**FIRST CLAIM FOR RELIEF**

**(Trade Dress Infringement)**

28. Plaintiff incorporates herein by reference the averments of the preceding paragraphs as though fully set forth herein.

29. Elements of Plaintiff's Bailey Button Boot Trade Dress are nonfunctional and its inherently distinctive quality has achieved a high degree of consumer recognition and serves to identify Plaintiff as the source of high-quality goods.

30. The Bailey Button Boot Trade Dress is of such a unique and unusual quality that a customer would immediately rely on said design to differentiate the source of goods.

31. Furthermore, the Bailey Button Boot Trade Dress has been featured in connection with various celebrities, has received a large volume of unsolicited media attention, and has graced the pages of many popular magazines nationwide and internationally.

32. The Infringing Products produced, distributed, advertised and offered for sale by Defendants bear nearly identical reproductions of the Bailey Button Boot Trade Dress, such as to cause a likelihood of confusion as to the source, sponsorship or approval of Defendants' products.

33. Defendants' unauthorized use of Plaintiff's Bailey Button Boot Trade Dress on their merchandise in interstate commerce and advertising relating to same constitutes false designation of origin and a false representation that the goods and services are manufactured, offered, sponsored, authorized, licensed by or otherwise connected with Plaintiff or come from the same source as Plaintiff's goods when, in fact, they do not.

34. Defendants' use of Plaintiff's Bailey Button Boot Trade Dress is without Plaintiff's permission or authority and in total disregard of Plaintiff's rights to control its trademarks.

1        35. Defendants' use of Plaintiff's Bailey Button Boot Trade Dress is likely to  
2 lead to and result in confusion, mistake or deception, and is likely to cause the public  
3 to believe that Defendants' products are produced, sponsored, authorized, or licensed  
4 by or that are otherwise connected or affiliated with Plaintiff, all to the detriment of  
5 Plaintiff.

6        36. Plaintiff has no adequate remedy at law.

7        37. In light of the foregoing, Plaintiff is entitled to injunctive relief  
8 prohibiting Defendants from using Plaintiff's Bailey Button Boot Trade Dress, or any  
9 designs confusingly similar thereto, and to recover all damages, including attorneys'  
10 fees, that Plaintiff has sustained and will sustain, and all gains, profits and advantages  
11 obtained by Defendants as a result of their infringing acts alleged above in an amount  
12 not yet known, as well as the costs of this action.

13                                    **SECOND CLAIM FOR RELIEF**

14                                    **(False Designations of Origin and False Descriptions)**

15        38. Plaintiff incorporates herein by reference the averments of the preceding  
16 paragraphs as though fully set forth herein.

17        39. Elements of Plaintiff's Bailey Button Boot Trade Dress are nonfunctional  
18 and their inherently distinctive quality has achieved a high degree of consumer  
19 recognition and serves to identify Plaintiff as the source of high-quality goods.

20        40. The Infringing Products produced, distributed, advertised and offered for  
21 sale by Defendants bear exact and/or confusingly similar reproductions of the Bailey  
22 Button Boot Trade Dress elements, such as to cause a likelihood of confusion between  
23 Defendants' products and Plaintiff's products.

24        41. The design of Defendants' Infringing Products is substantially the same as  
25 Plaintiff's Bailey Button Boot Trade Dress.

26        42. Defendants' unauthorized use of Plaintiff's Bailey Button Boot Trade  
27 Dress on merchandise in interstate commerce and advertising relating to same  
28 constitutes false designation of origin and a false representation that the goods are



1 manufactured, offered, sponsored, authorized, licensed by or otherwise connected with  
2 Plaintiff or come from the same source as Plaintiff's goods when, in fact, they do not.

3 43. Defendants' use of Plaintiff's Bailey Button Boot Trade Dress is without  
4 Plaintiff's permission or authority and in total disregard of Plaintiff's rights to control  
5 its intellectual property.

6 44. Defendants' activities are likely to lead to and result in confusion, mistake  
7 or deception, and are likely to cause the public to believe that Plaintiff has produced,  
8 sponsored, authorized, licensed or is otherwise connected or affiliated with  
9 Defendants' commercial and business activities, all to the detriment of Plaintiff.

10 45. Plaintiff has no adequate remedy at law.

11 46. In light of the foregoing, Plaintiff is entitled to injunctive relief  
12 prohibiting Defendants from using Plaintiff's Bailey Button Boot Trade Dress, or any  
13 designs confusingly similar thereto, and to recover all damages, including attorneys'  
14 fees, that Plaintiff has sustained and will sustain, and all gains, profits and advantages  
15 obtained by Defendants as a result of their infringing acts alleged above in an amount  
16 not yet known, as well as the costs of this action.

17 **THIRD CLAIM FOR RELIEF**

18 **(Federal Unfair Competition)**

19 47. Plaintiff incorporates herein by reference the averments of the preceding  
20 paragraphs as though fully set forth herein.

21 48. Plaintiff owns all rights, title, and interest in and to the Bailey Button  
22 Boot Trade Dress.

23 49. Plaintiff's Bailey Button Boot Trade Dress is nationally recognized,  
24 including within the Central District of California, as being affixed to goods and  
25 merchandise of the highest quality and coming from Plaintiff.

26 50. The Infringing Products produced, distributed, advertised and offered for  
27 sale by Defendants bear exact reproductions of the Bailey Button Boot Trade Dress  
28

1 elements, such as to cause a likelihood of confusion between Defendants' products and  
2 Plaintiff's products.

3 51. Defendants' unauthorized use of Plaintiff's Bailey Button Boot Trade  
4 Dress on merchandise that do not meet Plaintiff's standards of quality in interstate  
5 commerce and advertising relating to same constitutes false designation of origin and a  
6 false representation that the goods and services are manufactured, offered, sponsored,  
7 authorized, licensed by or otherwise connected with Plaintiff or come from the same  
8 source as Plaintiff's goods and are of the same quality as that assured by Plaintiff's  
9 Bailey Button Boot Trade Dress.

10 52. Defendants' use of Plaintiff's Bailey Button Boot Trade Dress elements is  
11 without Plaintiff's permission or authority and in total disregard of Plaintiff's rights to  
12 control its trade dress and designs.

13 53. Defendants' activities are likely to lead to and result in confusion, mistake  
14 or deception, and are likely to cause the public to believe that Plaintiff has produced,  
15 sponsored, authorized, licensed or is otherwise connected or affiliated with  
16 Defendants' commercial and business activities, all to the detriment of Plaintiff.

17 54. Upon information and belief, Defendants' acts are deliberate and intended  
18 to confuse the public as to the source of Defendants' goods or services and to injure  
19 Plaintiff and reap the benefits of the good will associated with Plaintiff's Bailey Button  
20 Boot Trade Dress.

21 55. As a direct and proximate result of Defendants' willful and unlawful  
22 conduct, Plaintiff has been injured and will continue to suffer injury to its business and  
23 reputation unless Defendants are restrained by this Court from infringing on Plaintiff's  
24 Bailey Button Boot Trade Dress.

25 56. Plaintiff has no adequate remedy at law.

26 57. In light of the foregoing, Plaintiff is entitled to injunctive relief  
27 prohibiting Defendants from using Plaintiff's Bailey Button Boot Trade Dress, or any  
28 designs confusingly similar thereto, and to recover all damages, including attorneys'

1 fees, that Plaintiff has sustained and will sustain, and all gains, profits and advantages  
2 obtained by Defendants as a result of their infringing acts alleged above in an amount  
3 not yet known, as well as the costs of this action.

4 **FOURTH CLAIM FOR RELIEF**

5 **(Patent Infringement – 35 U.S.C. § 271)**

6 58. Plaintiff incorporates herein by reference the averments of the preceding  
7 paragraphs as though fully set forth herein.

8 59. Plaintiff Deckers Outdoor Corporation is the owner by assignment of all  
9 right, title and interest in and to the Bailey Button Design Patents.

10 60. Defendants have knowingly and intentionally manufactured, caused to be  
11 produced, distributed, advertised, marketed, offered for sale, and/or sold footwear that  
12 is substantially similar to the Bailey Button Design Patents in direct violation of 35  
13 U.S.C. § 271.

14 61. Defendants' use of the Bailey Button Design Patents is without Plaintiff's  
15 permission or authority and is in total disregard of Plaintiff's right to control its  
16 intellectual property.

17 62. As a direct and proximate result of Defendants' infringing conduct,  
18 Plaintiff has been injured and will continue to suffer injury to its business and  
19 reputation unless Defendants are restrained by this Court from infringing Plaintiff's  
20 Bailey Button Design Patents.

21 63. Defendants' acts have damaged and will continue to damage Plaintiff, and  
22 Plaintiff has no adequate remedy at law.

23 64. On information and belief, Defendants' acts herein complained of  
24 constitute willful acts and intentional infringement of the Bailey Button Design  
25 Patents.

26 65. All of Deckers' UGG® footwear products, including products embodying  
27 the Bailey Button Design Patents, bear a label on the products themselves that gives  
28 notice to the public of its patent registration.



1 unjustly enriched and are benefiting from property rights that rightfully belong to  
2 Plaintiff.

3 72. Defendants' unauthorized use of Plaintiff's Bailey Button Boot Trade  
4 Dress and Bailey Button Design Patents has caused and is likely to cause confusion as  
5 to the source of Defendants' products, all to the detriment of Plaintiff.

6 73. Defendants' acts are willful, deliberate, and intended to confuse the public  
7 and to injure Plaintiff.

8 74. Plaintiff has no adequate remedy at law to compensate it fully for the  
9 damages that have been caused and which will continue to be caused by Defendants'  
10 infringing conduct, unless it is enjoined by this Court.

11 75. The conduct herein complained of was extreme, outrageous, fraudulent,  
12 and was inflicted on Plaintiff in reckless disregard of Plaintiff's rights. Said conduct  
13 was despicable and harmful to Plaintiff and as such supports an award of exemplary  
14 and punitive damages in an amount sufficient to punish and make an example of  
15 Defendants, and to deter it from similar such conduct in the future.

16 76. In light of the foregoing, Plaintiff is entitled to injunctive relief  
17 prohibiting Defendants from infringing the Bailey Button Boot Trade Dress and Bailey  
18 Button Design Patents, and to recover all damages, including attorneys' fees, that  
19 Plaintiff has sustained and will sustain, and all gains, profits and advantages obtained  
20 by Defendants as a result of their infringing acts alleged above in an amount not yet  
21 known, and the costs of this action.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff Deckers Outdoor Corporation respectfully prays for  
24 judgment against Defendants, as follows:

25 1. A Judgment that Defendants have infringed Deckers' Bailey Button  
26 Design Patents in violation of 35 U.S.C. § 271 as well as Deckers' Bailey Button Boot  
27 Trade Dress in violation of 15 U.S.C. § 1125 and that Defendants' infringement was  
28 willful;



1           2.     An order granting temporary, preliminary and permanent injunctive relief  
2     restraining and enjoining Defendants, their agents, servants, employees, officers,  
3     associates, attorneys, and all persons acting by, through, or in concert with any of  
4     them, are hereby temporarily, preliminarily, and permanently enjoined from using  
5     Plaintiff's Bailey Button Boot Trade Dress, or any designs confusingly similar thereto,  
6     including, but not limited to:

7                 a.     manufacturing, importing, advertising, marketing, promoting,  
8     supplying, distributing, offering for sale, or selling the Infringing Products or any other  
9     products which bear Plaintiff's Bailey Button Boot Trade Dress or any designs  
10    confusingly similar thereto and/or products bearing designs that infringe upon the  
11    Bailey Button Design Patents and/or the overall appearance thereof;

12                b.     engaging in any other activity constituting unfair competition with  
13    Plaintiff, or acts and practices that deceive consumers, the public, and/or trade,  
14    including without limitation, the use of designations and design elements used or  
15    owned by or associated with Plaintiff; and

16                c.     committing any other act which falsely represents or which has the  
17    effect of falsely representing that the goods and services of Defendants are licensed by,  
18    authorized by, offered by, produced by, sponsored by, or in any other way associated  
19    with Plaintiff;

20           3.     Ordering Defendants to recall from any distributors and retailers and to  
21    deliver to Plaintiff for destruction or other disposition all remaining inventory of all  
22    Infringing Products and related items, including all advertisements, promotional and  
23    marketing materials therefore, as well as means of making same;

24           4.     Ordering Defendants to file with this Court and serve on Plaintiff within  
25    thirty (30) days after entry of the injunction a report in writing, under oath setting forth  
26    in detail the manner and form in which Defendants have complied with the injunction;

27           5.     Ordering an accounting by Defendants of all gains, profits and advantages  
28    derived from their wrongful acts;

1           6.     Awarding Plaintiff all of Defendants' profits and all damages sustained by  
2 Plaintiff as a result of Defendants' wrongful acts, and such other compensatory  
3 damages as the Court determines to be fair and appropriate;

4           7.     Increasing the damages up to three times the amount found or assessed  
5 under 35 U.S.C. § 284;

6           8.     Awarding treble damages in the amount of Defendants' profits or  
7 Plaintiff's damages, whichever is greater, for willful infringement;

8           9.     Finding that this is an exceptional case under 35 U.S.C. § 285 and 15  
9 U.S.C. § 1117 and awarding attorneys' fees there under;

10          10.    Awarding applicable interest, costs, disbursements and attorneys' fees;

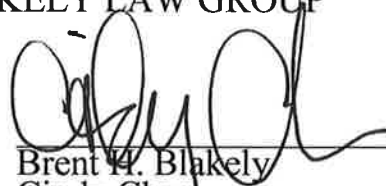
11          11.    Awarding Plaintiff's punitive damages in connection with its claims under  
12 California law; and

13          12.    Such other relief as may be just and proper.

14  
15     Dated: February 12, 2014

BLAKELY LAW GROUP

16  
17     By:



Brent H. Blakely

Cindy Chan

*Attorneys for Plaintiff  
Deckers Outdoor Corporation*

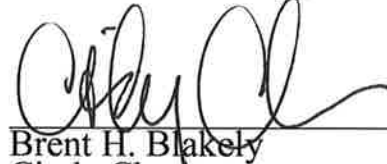
**DEMAND FOR JURY TRIAL**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff Deckers Outdoor Corporation hereby demands a trial by jury as to all claims in this litigation.

Dated: February 12, 2014

BLAKELY LAW GROUP

By:



Brent H. Blakely

Cindy Chan

*Attorneys for Plaintiff  
Deckers Outdoor Corporation*



US00D599999S

(12) **United States Design Patent**  
**MacIntyre**

(10) **Patent No.:** **US D599,999 S**  
(45) **Date of Patent:** **\*\* Sep. 15, 2009**

(54) **PORTION OF A FOOTWEAR UPPER**

EP 00718002-0006 4/2007

(75) Inventor: **Jennifer MacIntyre**, Santa Barbara, CA (US)

**OTHER PUBLICATIONS**

(73) Assignee: **Deckers Outdoor Corporation**, Goleta, CA (US)

UGG Australia, Bipster model, p. 1, Oct. 3, 2008.  
UGG Australia, Henry model, p. 1, Oct. 3, 2008.  
UGG Australia, Erin model, p. 1, Oct. 3, 2008.  
UGG Australia, Cove model, p. 1, Oct. 27, 2008.  
UGG Australia, Kona model, p. 1, Oct. 27, 2008.  
Catalogue Moscow Shoes, summer 2006, p. 2 top center.  
Steve Madden MISSYY Brown Suede boot, www.jildorshoes.com, Dec. 9, 2008.

(\*\*) Term: **14 Years**

\* cited by examiner

(21) Appl. No.: **29/326,868**

(22) Filed: **Oct. 27, 2008**

Primary Examiner—Stella M Reid

Assistant Examiner—Rashida C McCoy

(74) Attorney, Agent, or Firm—Greer, Burns & Crain, Ltd.

(51) **LOC (9) Cl.** ..... **02-99**

(52) **U.S. Cl.** ..... **D2/970; D2/911; D2/946**

(58) **Field of Classification Search** ..... **D2/896,**  
**D2/909–915, 946, 970, 973, 974; 36/45,**  
**36/50.1, 83, 3 A, 7.1 R, 113**

See application file for complete search history.

(57) **CLAIM**

The ornamental design for a portion of a footwear upper, as shown and described.

(56) **References Cited**

**DESCRIPTION**

**U.S. PATENT DOCUMENTS**

FIG. 1 is a perspective view of a portion of a footwear upper showing my new design;

FIG. 2 is a side elevational view thereof;

FIG. 3 is an opposite side elevational view thereof;

FIG. 4 is a front elevational view thereof;

FIG. 5 is a rear elevational view thereof;

FIG. 6 is a top plan view thereof; and,

FIG. 7 is a bottom plan view thereof.

The broken lines in FIGS. 1–7 represent portions of the footwear that form no part of the claimed design. The broken line which defines the bounds of the claimed design forms no part thereof.

D125,568 S \* 3/1941 Hard ..... D2/911  
D155,573 S \* 10/1949 Bingham ..... D2/910  
D159,577 S \* 8/1950 Stromberg ..... D2/900  
D159,761 S \* 8/1950 Barron ..... D2/910  
D227,197 S \* 6/1973 Fukuoka ..... D2/910  
D319,332 S \* 8/1991 Itzkowitz ..... D2/910  
D481,863 S \* 11/2003 Belley et al. .... D2/970  
D529,269 S \* 10/2006 Belley et al. .... D2/970  
D539,024 S 3/2007 Belley et al.  
D581,140 S 11/2008 Earle

**FOREIGN PATENT DOCUMENTS**

DE 40702148 8/2007

**1 Claim, 6 Drawing Sheets**



**EXHIBIT**

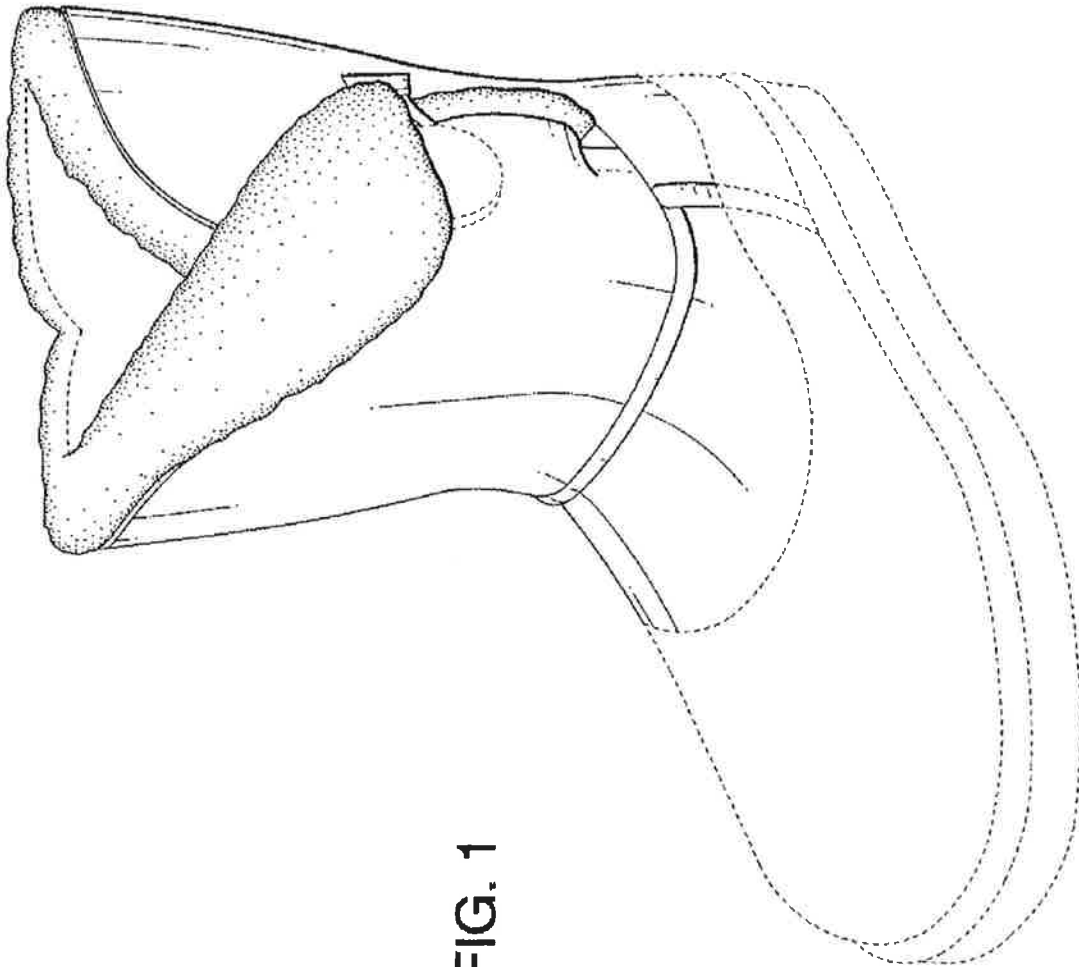
**1**

**U.S. Patent**

**Sep. 15, 2009**

**Sheet 1 of 6**

**US D599,999 S**



**FIG. 1**

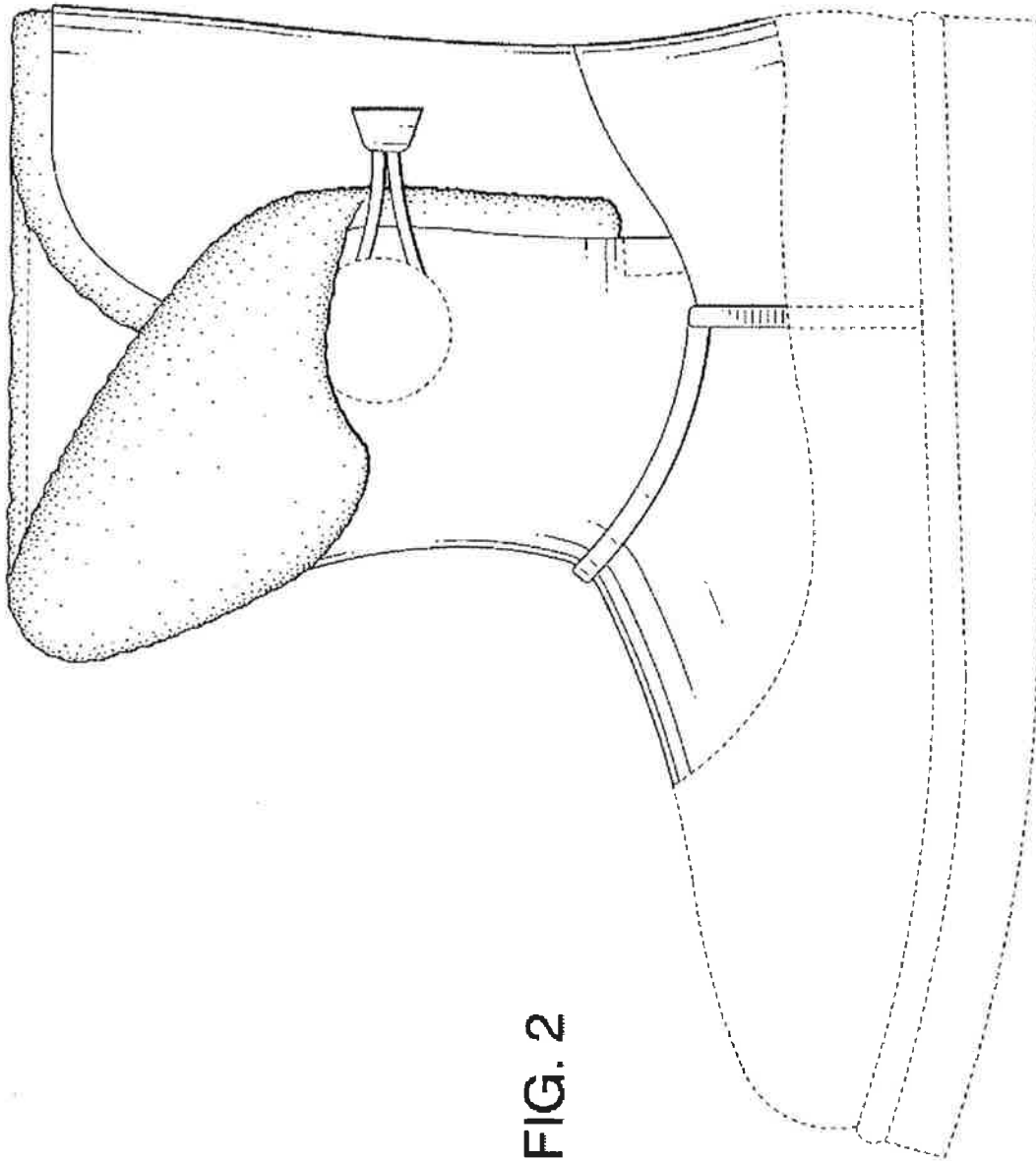


**U.S. Patent**

**Sep. 15, 2009**

**Sheet 2 of 6**

**US D599,999 S**



**FIG. 2**

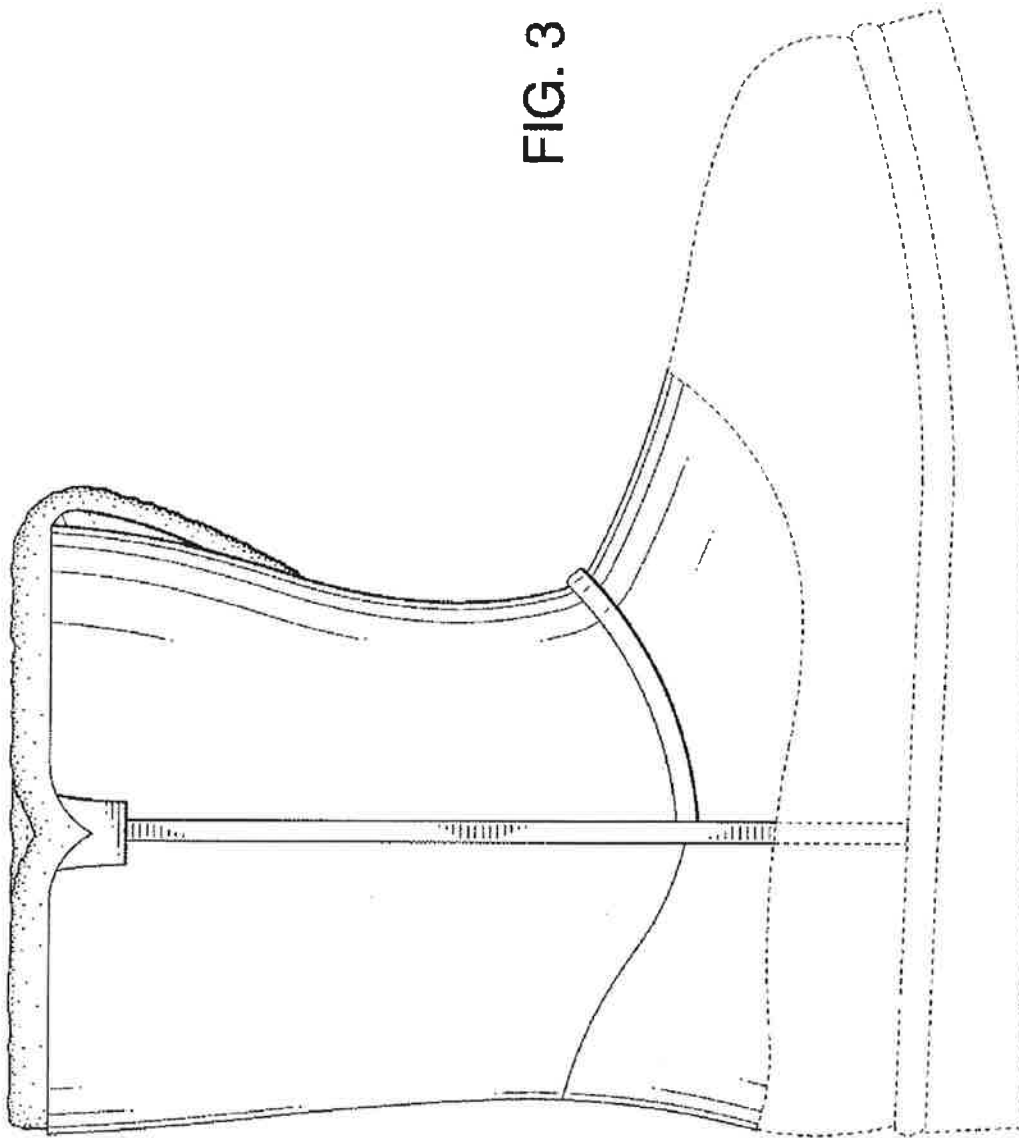
**U.S. Patent**

Sep. 15, 2009

Sheet 3 of 6

**US D599,999 S**

**FIG. 3**



U.S. Patent

Sep. 15, 2009

Sheet 4 of 6

US D599,999 S

FIG. 5

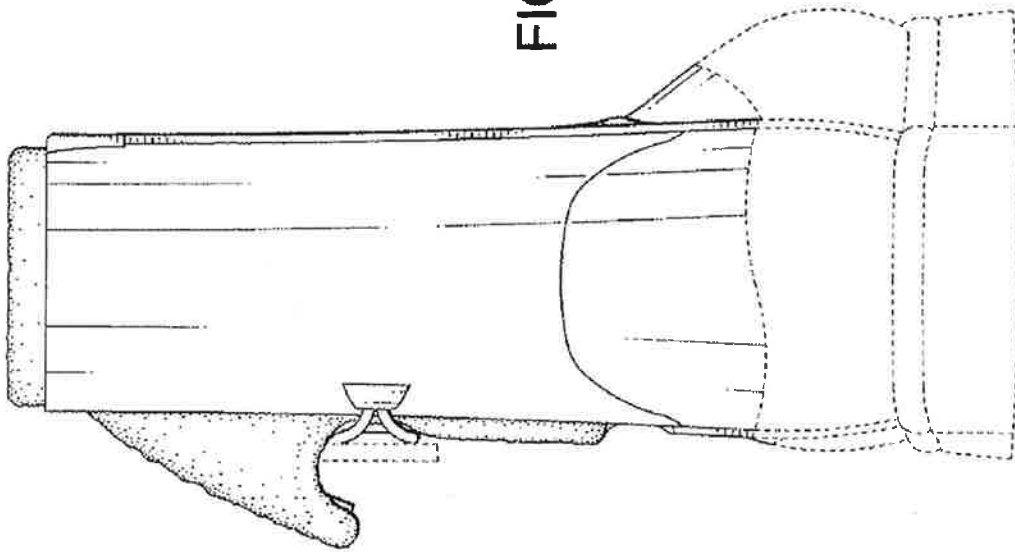
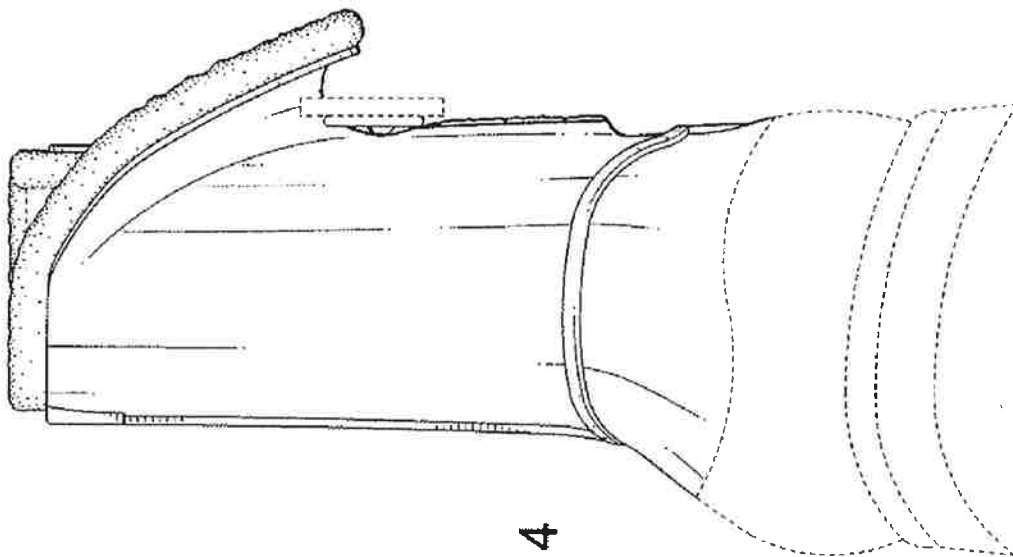


FIG. 4

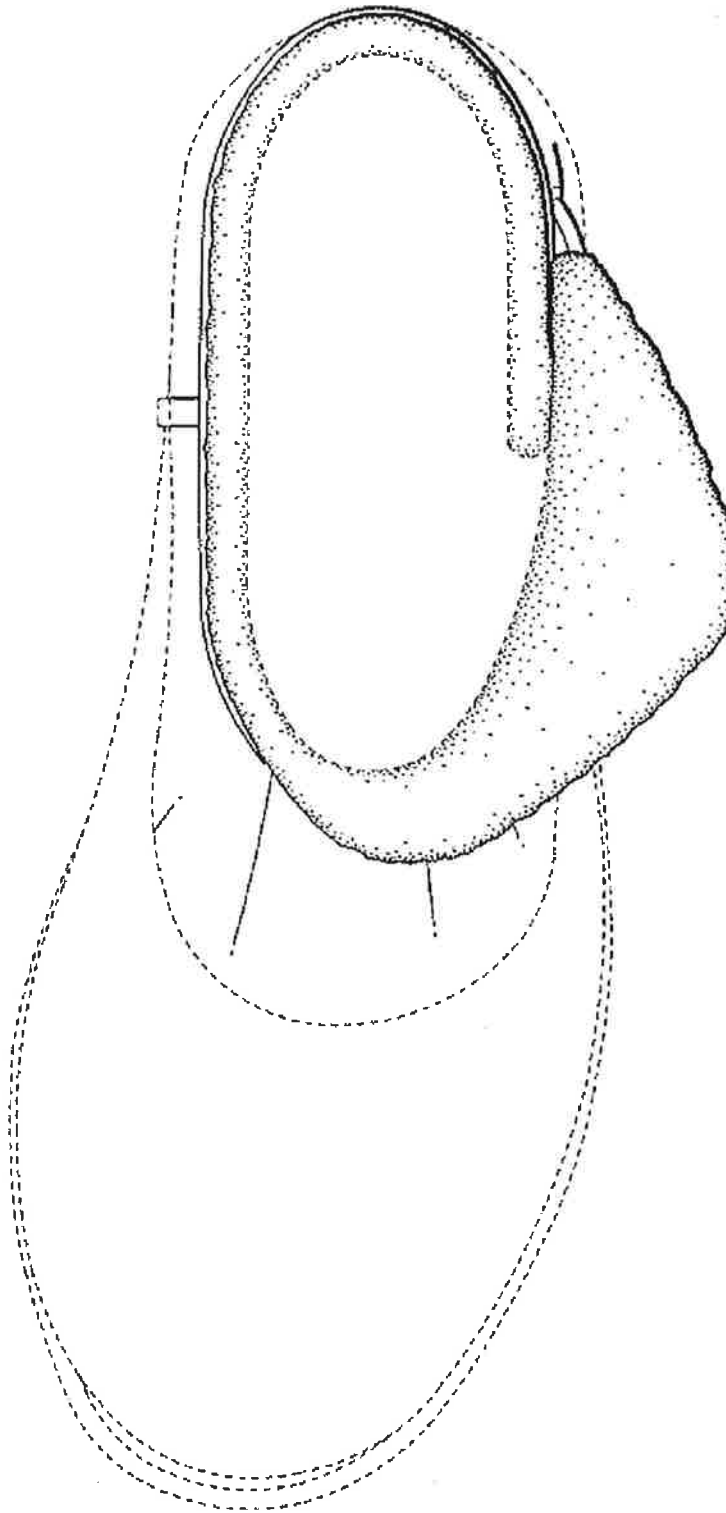


**U.S. Patent**

Sep. 15, 2009

Sheet 5 of 6

**US D599,999 S**



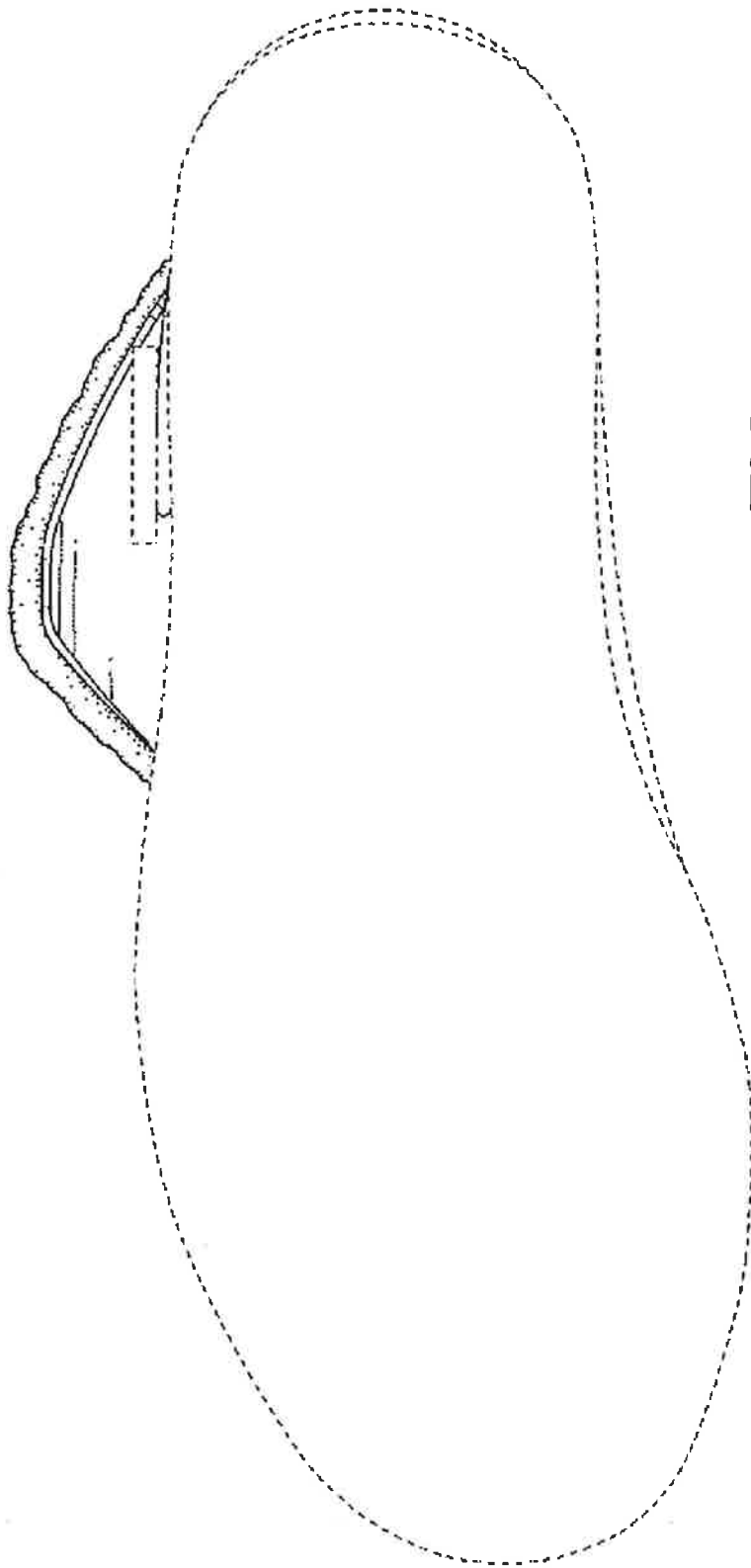
**FIG. 6**

**U.S. Patent**

**Sep. 15, 2009**

**Sheet 6 of 6**

**US D599,999 S**



**FIG. 7**





US00D616189S

(12) **United States Design Patent**  
**MacIntyre**

(10) **Patent No.:** **US D616,189 S**

(45) **Date of Patent:** **\*\* \*May 25, 2010**

(54) **PORTION OF A FOOTWEAR UPPER**

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D575,495 S 8/2008 Le

D580,158 S 11/2008 Belley et al.

(75) Inventor: **Jennifer MacIntyre**, Santa Barbara, CA  
(US)

(73) Assignee: **Deckers Outdoor Corporation**, Goleta,  
CA (US)

(Continued)

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(\*\*) Term: **14 Years**

DE 40702148 8/2007

(21) Appl. No.: **29/343,479**

(22) Filed: **Sep. 14, 2009**

(Continued)

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**Related U.S. Application Data**

(63) Continuation-in-part of application No. 29/326,868,  
filed on Oct. 27, 2008, now Pat. No. Des. 599,999.

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(Continued)

(51) **LOC (9) Cl.** ..... **02-99**

(52) **U.S. Cl.** ..... **D2/970**

(58) **Field of Classification Search** ..... D2/896,

D2/902, 903, 905-915, 946, 970, 972, 974,

D2/976; 36/45, 50.1, 83, 3 A, 7.1 R, 113,

36/101, 112, 114, 116, 126-130, 48

See application file for complete search history.

*Primary Examiner*—Robert M Spear

*Assistant Examiner*—Rashida C McCoy

(74) *Attorney, Agent, or Firm*—Greer, Burns & Crain, Ltd.

(57)

**CLAIM**

The ornamental design for a portion of a footwear upper, as shown and described.

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**DESCRIPTION**

FIG. 1 is a perspective view of a portion of a footwear upper showing my new design;

FIG. 2 is a side elevational view thereof;

FIG. 3 is an opposite side elevational view thereof;

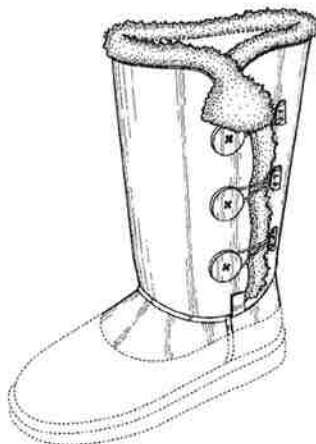
FIG. 4 is a front elevational view thereof;

FIG. 5 is a rear elevational view thereof; and,

FIG. 6 is a top plan view thereof.

The broken lines in FIGS. 1-6 represent portions of the footwear that form no part of the claimed design. The broken line which defines the bounds of the claimed design forms no part thereof.

**1 Claim, 6 Drawing Sheets**



**US D616,189 S**

Page 2

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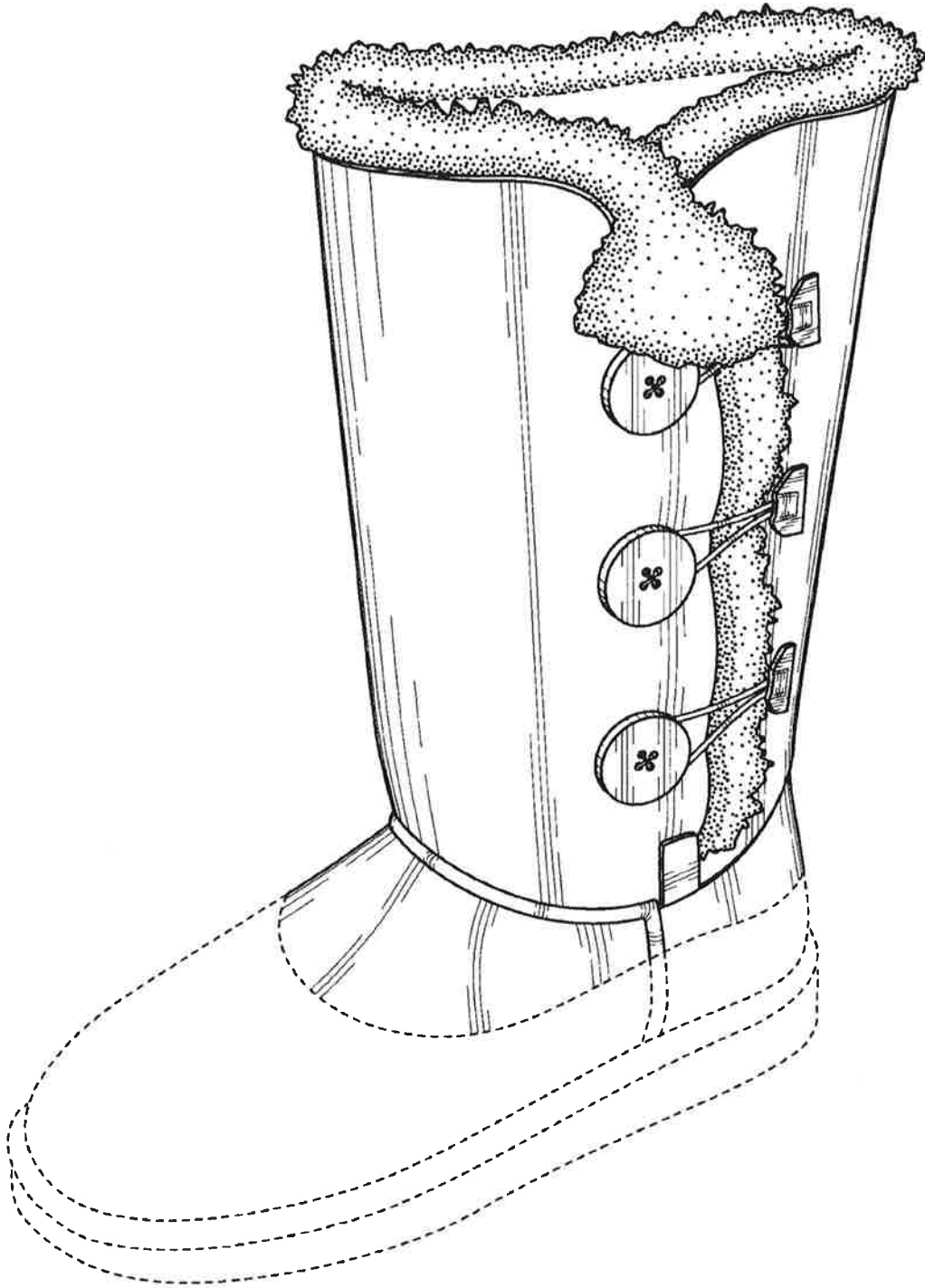
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**U.S. Patent**

**May 25, 2010**

**Sheet 1 of 6**

**US D616,189 S**



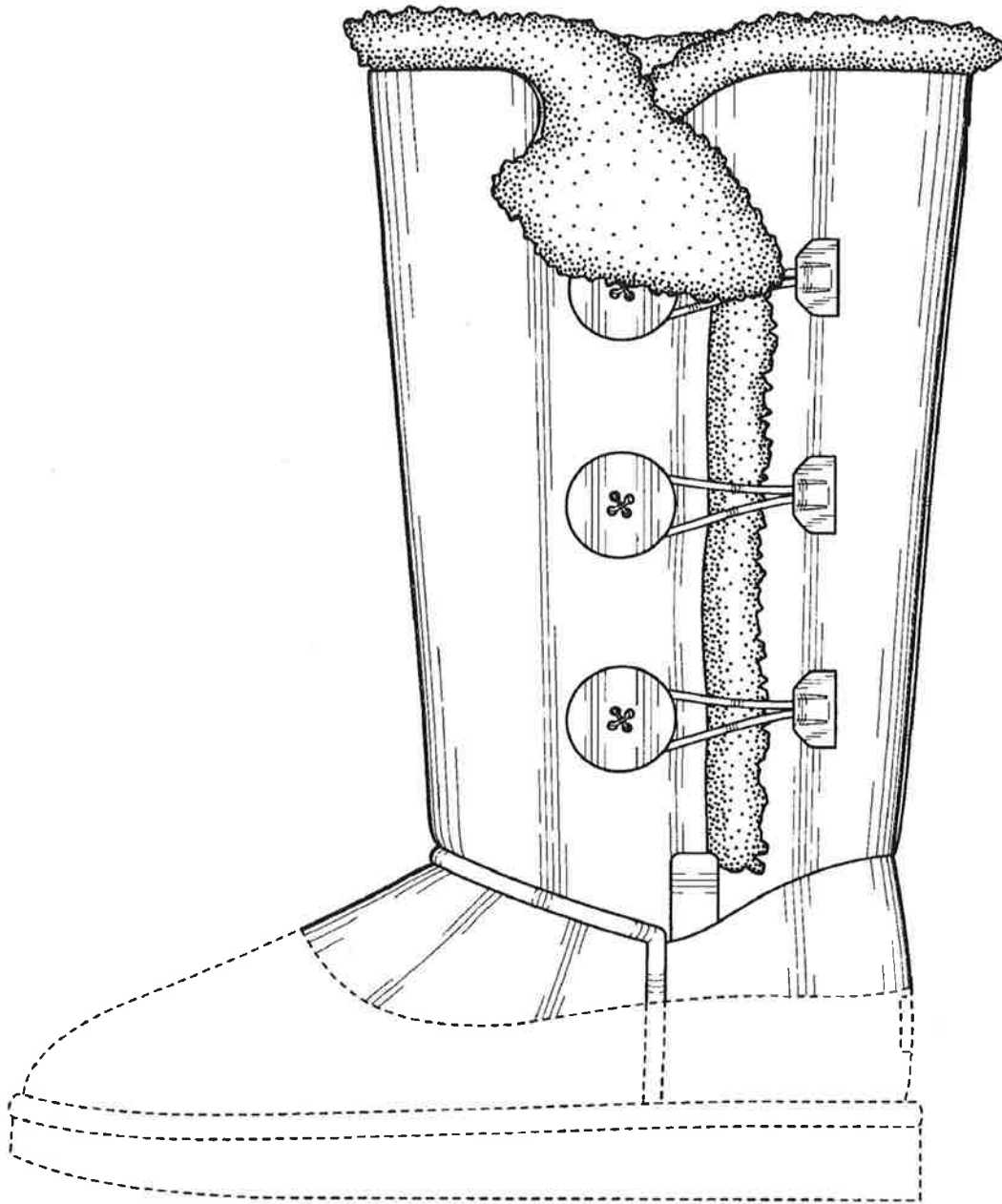
**FIG. 1**

**U.S. Patent**

**May 25, 2010**

**Sheet 2 of 6**

**US D616,189 S**



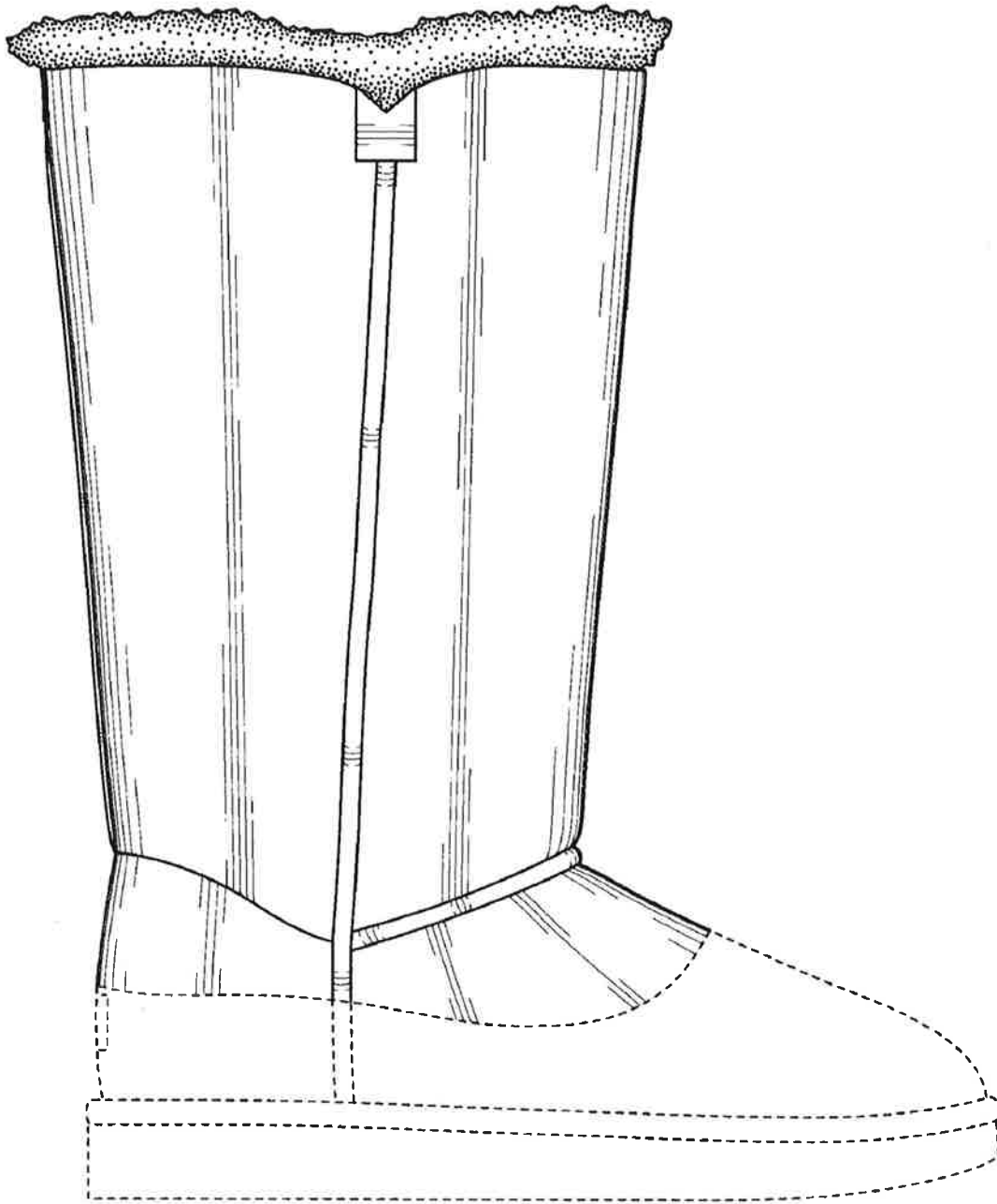
**FIG. 2**

**U.S. Patent**

**May 25, 2010**

**Sheet 3 of 6**

**US D616,189 S**



**FIG. 3**

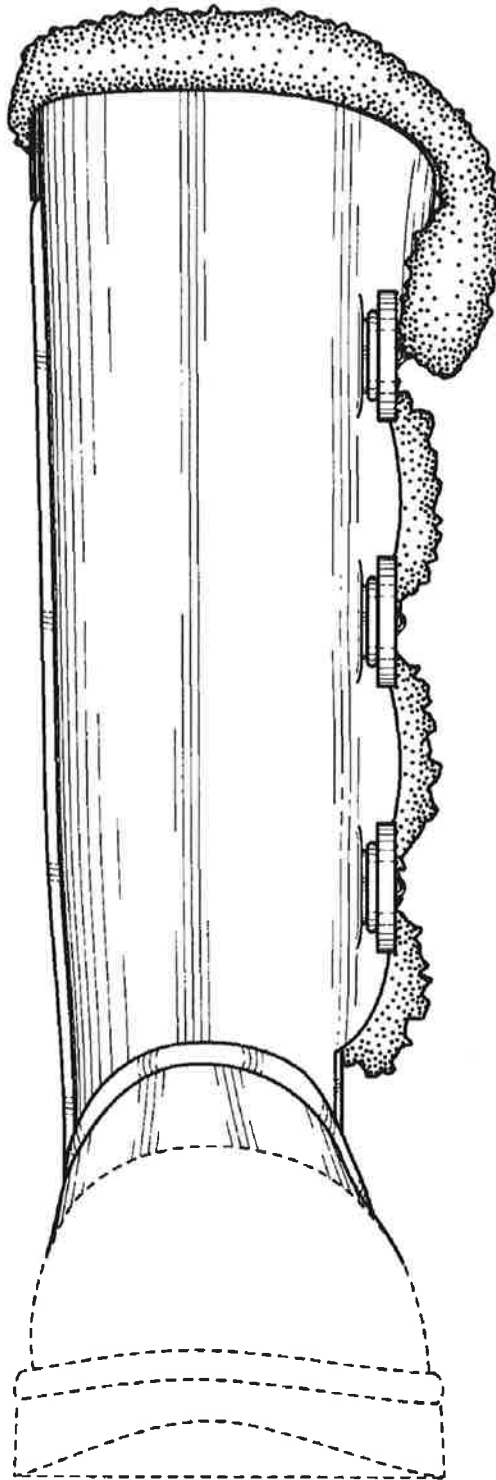


**U.S. Patent**

**May 25, 2010**

**Sheet 4 of 6**

**US D616,189 S**



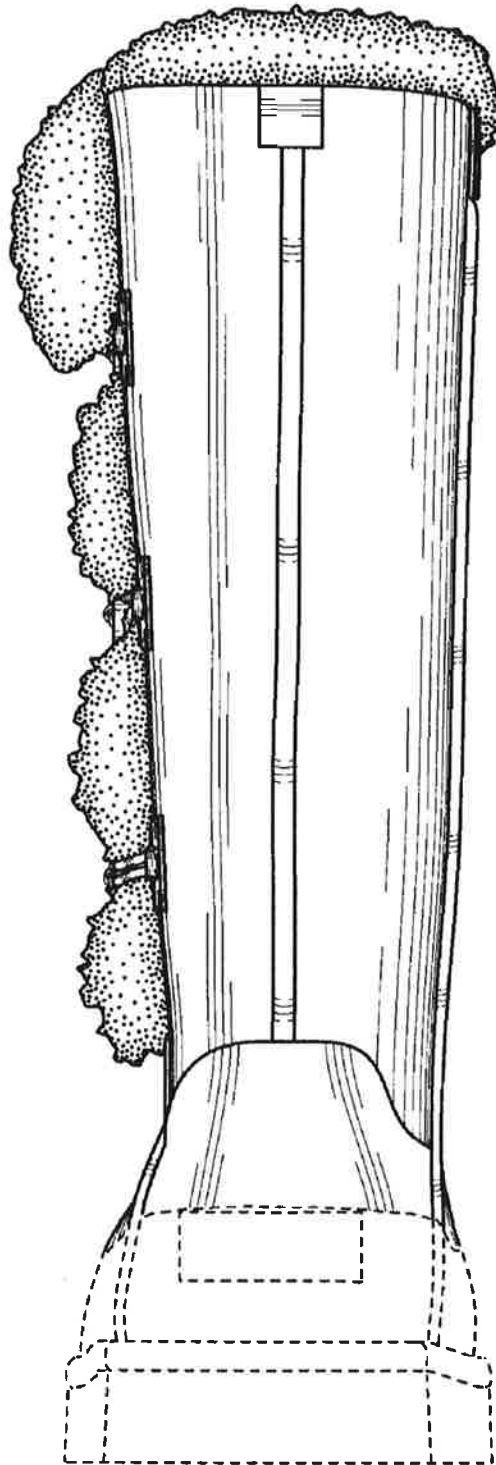
**FIG. 4**

**U.S. Patent**

**May 25, 2010**

**Sheet 5 of 6**

**US D616,189 S**



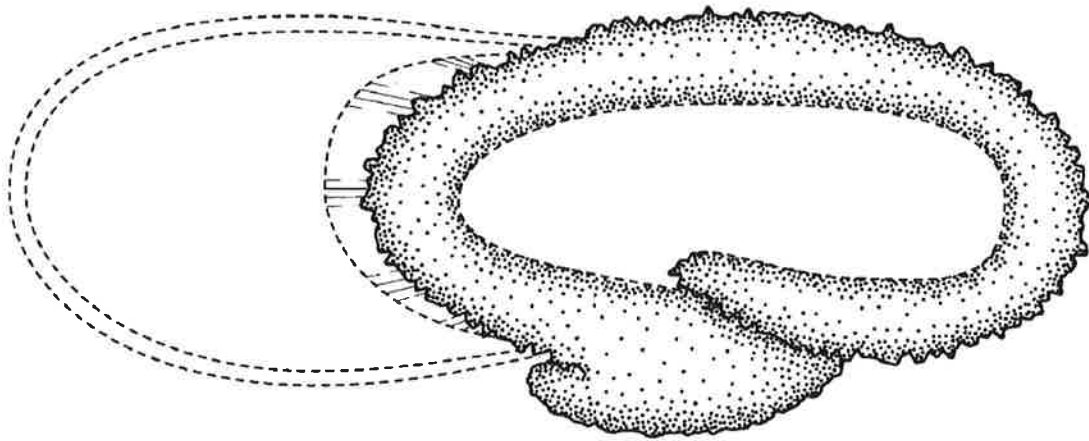
**FIG. 5**

**U.S. Patent**

**May 25, 2010**

**Sheet 6 of 6**

**US D616,189 S**



**FIG. 6**